

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                     )  
  )  
Application for                         )  
Certification for the                 ) Docket No. 99-AFC-8  
BLYTHE ENERGY PROJECT             )  
(Blythe Energy, LLC)                 )  
\_\_\_\_\_ )

BLYTHE CITY HALL  
ADMINISTRATION COUNCIL CHAMBERS  
235 NORTH BROADWAY  
BLYTHE, CALIFORNIA

TUESDAY, NOVEMBER 28, 2000

8:02 A.M.

Reported by:  
Valorie Phillips  
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

STAFF PRESENT

Edwin Bouillon, Jr., Hearing Officer

Terry O'Brien, Advisor

Lisa De Carlo, Staff Counsel

Lance Shaw, Project Manager

Richard Sapudar

Richard Anderson

James Fore

Michael Ringer

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Carmela Garnica

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 8:02 a.m.

3 PRESIDING MEMBER KEESE: We call this  
4 meeting back to order momentarily. The applicant  
5 and staff have indicated that they believe that  
6 they could be productive on the issue of biology  
7 in a brief workshop.

8 So, once again, we're going to give  
9 them -- this time it is a half an hour. They're  
10 going to be in the other room from 8:00 to 8:30  
11 and then they will report back to us, and we will  
12 reconvene at 8:30.

13 The public is welcome to participate.  
14 They'll be in the other room. The only people who  
15 can't go there are Commissioners.

16 (Off-the-record workshop.)

17 PRESIDING MEMBER KEESE: We will call  
18 this meeting back to order. And I will note that  
19 Ms. Mendonca is here in the back row. Ms.  
20 Mendonca will be leaving at 9:00 this morning.  
21 So, if anybody cares to take advantage of Ms.  
22 Mendonca's services, or has requests for her,  
23 please try to catch her before 9:00.

24 Mr. Bouillon.

25 HEARING OFFICER BOUILLON: In addition,

1 if anybody wants to make any public comment at the  
2 end of this proceeding this morning, I'd  
3 appreciate it if they'd fill out the blue cards in  
4 the back that Roberta's holding up at the present  
5 time, and hand them to anybody up here and we'll  
6 make sure that you're called.

7 At this time we're going to proceed with  
8 the topic of biological resources, and we're going  
9 to take the staff out of order. As I understand,  
10 there's some corrections to their testimony.

11 Ms. DeCarlo, you may proceed.

12 MS. DeCARLO: Thank you. Staff's  
13 witness for biological resources is Dick Anderson,  
14 and he needs to be sworn in.  
15 Whereupon,

16 RICHARD ANDERSON  
17 was called as a witness herein and after first  
18 being duly sworn, was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 BY MS. DeCARLO:

22 Q Could you please state your name for the  
23 record?

24 A My name is Richard Anderson.

25 Q And do you have with you a copy of your

1 testimony on biological resources, which consists  
2 of testimony filed in exhibit 53, the final staff  
3 assessment?

4 A Yes, I do.

5 Q And was a copy of your qualifications  
6 filed with the staff assessment?

7 A Yes, they were.

8 Q Do you have any corrections to the  
9 documents you're sponsoring today?

10 A Do I have any what?

11 Q Modifications or corrections?

12 A Yes. I have some modifications based on  
13 a workshop, and requested modifications by the  
14 project applicant. Would you like me to go  
15 through those now?

16 Q Yes, if you would, please.

17 A I'm looking at the declaration of the  
18 testimony of Alice Karl, the biological consultant  
19 for the applicant. I'll give everybody a minute  
20 to get that together, if they have it.

21 On page 41 of her testimony there is a  
22 section titled, review of final staff assessment,  
23 in which there are a number of comments and  
24 requests changes.

25 We have just gone over all of those



1 changes and essentially are in agreement. In some  
2 cases they are as requested by the applicant; in  
3 other cases we have presented other options. In  
4 other cases further information has arrived. so  
5 the original staff testimony stands.

6 And I'll attempt now to kind of wind our  
7 way through these. We will be referring from the  
8 request by the applicant, which is Alice Karl's  
9 testimony. And then the changes will be actually  
10 made in staff's final staff assessment on  
11 biological resources.

12 So, the first comment is on page 41 of  
13 Alice Karl's testimony. She's requesting a change  
14 or clarification for page 79 of the final staff  
15 assessment.

16 So, on page 79 of the final staff  
17 assessment, the last paragraph, in the middle of  
18 that paragraph there's a sentence that starts:  
19 However, Harwood's milkvetch is an annual species,  
20 not a perennial."

21 I've crossed out the word "and" and  
22 inserted the word "although" "this species flowers  
23 from January to March" I've crossed out "and  
24 would" and inserted "it may not have been  
25 detectable during" and everything else is the

1 same.

2 The idea here was that they did look for  
3 this plant at the correct time of the year, but  
4 depending upon the warmth of the season and the  
5 length and the amount of rainfall, the plant may  
6 or may not be detectable during the whole  
7 flowering season.

8 And so there was a question about  
9 whether they were able to detect it if it had been  
10 there. And I think that that wording change  
11 satisfies their concern.

12 Q I'm sorry, Dick, if I may interrupt.  
13 You stated January to March, did you mean to say  
14 January to May?

15 A Yes.

16 HEARING OFFICER BOUILLON: Read that  
17 sentence again, please, Mr. Anderson.

18 MR. ANDERSON: "However, Harwood's  
19 milkvetch is an annual species, not a perennial,  
20 although" and not -- and is lost "this species  
21 flowers from January to May" and "would" is  
22 crossed out, and inserted "it may not have been  
23 detectable during the 1999 or 2000" and everything  
24 else is the same. So, it's very minor.

25 The second change has to do with page 86

1 of staff's final assessment, and it has to do with  
2 the drainages and the water courses, the Colorado  
3 River and riparian habitat.

4 There are a number of bird species that  
5 may nest in that habitat during the spring and  
6 early summer that the applicant had said they  
7 would do preconstruction surveys for in their  
8 mitigation measures in the AFC.

9 We discussed this in two workshops now,  
10 and it's been decided that if they don't construct  
11 during the time of the year that the birds would  
12 be there, which is nesting time, in other words if  
13 they're constructing in the fall, late summer,  
14 winter, there's no need to do preconstruction  
15 surveys because the birds simply wouldn't be  
16 there.

17 And so what I've done is I've included  
18 on page 87, under the same section, sensitive  
19 plant and wildlife surveys, but under staff's  
20 recommended mitigation, I've added a third  
21 paragraph in the middle of the page that says,  
22 special status bird species near water features  
23 (riparian areas) do not require preconstruction  
24 surveys provided construction activities in those  
25 areas are conducted during seasons when there is

1 very low risk of impact.

2 And the seasons for each species will be  
3 clarified in detail in the biological resources  
4 mitigation implementation monitoring program.  
5 Instead of listing a half a dozen possible species  
6 with dates here.

7 The next recommended change or comment  
8 references BIO-1, so in the conditions of  
9 certification in staff's final assessment, BIO-1,  
10 and then it's got 17.3, and I happen to have that  
11 same number on mine, because I downloaded it from  
12 our website. And so if you don't have that, you  
13 probably received a hard copy and your number  
14 system is a little more sensible.

15 But under the second heading, under BIO-  
16 1, the first heading is for proposed 76 acre power  
17 plant. The second subheading is for the El Paso  
18 natural gas pipeline connection, number 3.

19 It has to do with the details of what  
20 the biological monitor does in terms of desert  
21 tortoise. And Dr. Karl has gone to some length  
22 and spelled out in detail some clarifications.

23 But what we've done is we've just  
24 summarized -- this is just a summary sentence.  
25 But this whole BIO-1, if you go back to the first

1 paragraph, it incorporates by reference all of the  
2 mitigation measures in detail that were discussed  
3 by the applicant and staff. And so it does  
4 include that detail, it just doesn't -- we didn't  
5 create or duplicate several pages here.

6 So, it's incorporated by reference, and  
7 it will be represented in the biological resources  
8 mitigation implementation monitoring plan. In  
9 discussions earlier this morning I think that the  
10 applicant was satisfied with that.

11 Moving on to BIO-7 --

12 BY MS. DeCARLO:

13 Q I'm sorry, Dick, also with regards to  
14 number 3, BIO-1, did you want to insert "in or  
15 adjacent to"?

16 A Oh, yeah. Another recommendation was  
17 what Lisa DeCarlo just said, that adjacent to  
18 tortoise habitat it should be in or adjacent to,  
19 and that's excellent, we agree to that.

20 BIO-7 is the next issue. And there's a  
21 series of conditions here, BIO-6, BIO-7 and BIO-8  
22 that have to do with water, the evaporation ponds,  
23 in looking for dead birds, monitoring water  
24 quality, and monitoring live birds, infecting  
25 invertebrates that may be bioaccumulating toxic

1 material if there is any toxic material  
2 accumulating in the evaporation ponds.

3 BIO-7 is the one here that is mentioned  
4 in that there's no end to the bird monitoring.  
5 And that was not my intention. My intention was,  
6 as the other four components, which are included  
7 in BIO-6 and BIO-8, there's four components but  
8 there's three conditions. BIO-8 includes two  
9 components, water quality and invertebrate  
10 monitoring.

11 BIO-7, I intended to add the same last  
12 sentence that is on BIO-6, which is: This  
13 monitoring shall continue for the first three  
14 years of plant operations, and depending on the  
15 results, could be discontinued at that time.

16 HEARING OFFICER BOUILLON: You're saying  
17 add that to BIO-7, as well?

18 MR. ANDERSON: Yes. There are some  
19 other changes in BIO-7. There was a request that  
20 the bird monitoring could be done by the  
21 designated biologist or the applicant wished to  
22 put in competent person. That's not quite  
23 detailed enough because we could have an  
24 accountant who's a very competent person, but who  
25 knows nothing of birds.

1                   So we talked about this this morning and  
2           so I have added after the parenthetical phrase  
3           there, by the designated biologist. I crossed out  
4           "and" and put "or another biologist or birding  
5           expert familiar with, and that can identify birds  
6           of the area, and is approved by the compliance  
7           project manager."

8                   Somehow we'll get these wording changes  
9           to you. I know it's a lot to try to scribble in.  
10          I think I'm done with that one.

11                  And so there were some changes made in  
12          terms of the number of years and types of  
13          monitoring that should be done that I would -- I  
14          disagree with, and just would prefer it be  
15          monitored for three years, and then a decision  
16          made.

17                  Each year obviously the data would be  
18          looked at to determine the types of use of birds  
19          and what's going on at the ponds. After three  
20          years there would be a final decision of whether  
21          there is a problem, or potential for a problem.  
22          And we could discontinue monitoring at that time  
23          if it seems reasonable.

24                  The next comment has to do with BIO-10.  
25          And this is a request by the applicant to delete

1 BIO-10. BIO-10 had to do with during construction  
2 activities there will be a fence around the whole  
3 site that excludes tortoise from entering the  
4 site. They're slow moving, we're afraid they will  
5 be run over, crushed or killed.

6 And so the whole site will be fenced  
7 with an exclusionary type fencing for tortoise.  
8 There was interest in having large gaps in that  
9 fence, so that large pieces of equipment could be  
10 brought in during construction and sat down. And  
11 so this condition was inserted, created.

12 Since then, in discussions we've talked  
13 about the gates will be of adequate size to  
14 accommodate all equipment and materials. And the  
15 gates, although they move, will have fencing that  
16 goes down to the ground, doing the best we can.  
17 Tortoise exclusionary fence actually gets put down  
18 into the ground, because tortoises are diggers.

19 And so it's fine with us to delete  
20 number 10. And then, as recommended by the  
21 applicant, we would add a portion on temporary  
22 fencing to BIO-9. So the last sentence that says  
23 temporary fencing must be installed at any gaps if  
24 it will remain open over night, would be added to  
25 number 9.



1           I changed the wording just slightly, so  
2       BIO-9 would now, instead of ending with "of a  
3       problem being identified." would say, "temporary  
4       fencing must be installed at any gaps opened in  
5       the project site fence if these gaps will be left  
6       open overnight." It's very very similar.

7           Okay. BIO-13. This was an effort for  
8       compensation for the loss of tortoise habitat that  
9       had been left open. The exact amount was not  
10      determined, but the Desert Tortoise Preserve  
11      Committee had a representative working on parcel  
12      costs and endowment amount.

13           They have not submitted a written  
14      proposal yet, but have let us know by email that  
15      they have obtained enough information to propose  
16      that the cost would be approximately \$1200 per  
17      acre, which would change the \$131,155 figure to  
18      \$92,580.

19           HEARING OFFICER BOUILLON: I'm sorry,  
20      what was that last figure?

21           MR. ANDERSON: \$92,580. And so that  
22      represents \$1200 per acre for 77.15 acres of lost  
23      habitat. And that \$1200 includes the cost of  
24      purchasing the parcel, the short- and long-term  
25      administrative and management costs associated

1 with that upkeep, if there is some. And then an  
2 endowment that would provide a small amount of  
3 money for long-term management.

4 And that's the only change I'd like to  
5 make to this one. Oh, excuse me, there's one  
6 other change. In other words, in light of this  
7 new information I think that the applicant no  
8 longer cares about making the changes that they've  
9 recommended. I would like to keep the BIO-13 as  
10 it is, just with the dollar change.

11 And then there was a request and  
12 verification for a change of not less, it says now  
13 30 days, a change to 15 days. And I see no reason  
14 why that's not acceptable.

15 That means the check would be provided  
16 to the Desert Tortoise Preserve Committee 15 days  
17 prior to the start of construction activities.

18 The next change has to do with BIO-14.  
19 BIO-14 is on page 97 of the final staff  
20 assessment. This one we may need to work out the  
21 wording a little better, but my proposed changes  
22 to this would read: To compensate for permanent  
23 impacts to Harwood's milkvetch, the project owner  
24 shall provide \$25,000 to re-vegetate or protect an  
25 appropriate area with Harwood's milkvetch. The

1 minimum number of viable plants to be installed or  
2 protected will be 100."

3 Now, I've added some words there and I  
4 think I just kind of skipped over where I added  
5 them. But, I think there's too much here for you  
6 to document, so you'll have to trust that we will  
7 re-do it for you. Lisa, how would we do this?

8 MS. DeCARLO: If the Committee would  
9 like, we could submit a --

10 HEARING OFFICER BOUILLON: What the  
11 Committee will request, as you well know, requests  
12 are demands, is clean copies of all of the BIO  
13 conditions in a single format both in hard copy  
14 and on a floppy disk.

15 MS. DeCARLO: And we will provide that.

16 MR. ANDERSON: To continue with BIO-14,  
17 the minimum number of viable plants to be  
18 installed or protected will be 100. On the land  
19 conserved for the desert tortoise, appropriate  
20 locations for plantings will be identified and  
21 plantings carried out under the supervision of a  
22 botanist with desert tortoise restoration  
23 experience, working for the Desert Tortoise  
24 Preserve Committee.

25 Alternatively, a donation in the amount

1 of \$25,000 shall be given to the Rancho Santa Ana  
2 Botanical Gardens for collection and preservation  
3 of Harwood's milkvetch seeds if the mitigation  
4 cannot be fulfilled on the desert tortoise  
5 conservation parcel. Other appropriate  
6 alternatives can be considered as needed.

7 What this means is the applicant would  
8 provide a \$25,000 check for mitigation for  
9 Harwood's milkvetch. We would prefer that this be  
10 used on an area that's protected and controlled  
11 for natural resource purposes, such as the land  
12 protected for the desert tortoise.

13 Since that parcel has not been purchased  
14 yet, we are not certain that there will be  
15 applicable appropriate habitat on the site. So  
16 that would have to be determined upon  
17 identification of the exact parcel.

18 If it's not possible to mitigate for  
19 Harwood's milkvetch on that same parcel, then an  
20 option would be for seed collection. And what  
21 that means is that seeds collected then becomes  
22 available for future projects for re-vegetation so  
23 that Harwood's milkvetch populations can be  
24 established in a number of places, the seeds are  
25 already there and viable and waiting to be used.

1 Which often is a problem on projects, the wild  
2 seeds or natural seeds are not available. So it  
3 would be very beneficial also as an option.

4 And the last change, BIO-15, on the same  
5 page, 97, is essentially a duplication of a  
6 condition in the soils and water conditions of  
7 certification. Provided that condition is not  
8 requested to be deleted, this one can be.

9 HEARING OFFICER BOUILLON: I'm sorry,  
10 it's a duplicate of which one in soils and water?

11 MR. ANDERSON: There's a condition in  
12 soils and water that -- it may be 11?

13 MS. DeCARLO: It is 11.

14 MR. ANDERSON: Soils and water-11, that  
15 actually goes into more detail. This one is  
16 concerned essentially with the streambed  
17 alteration permit of Fish and Game.

18 Soils and water-11 talks about a  
19 number -- that permit and others. And so it  
20 incorporates this. And so staff has -- it's fine  
21 with staff if this one is deleted, as long as  
22 soils and water-11 remains.

23 BY MS. DeCARLO:

24 Q And did you also want to make some  
25 modifications to BIO-14 verification?

1           A     Yes.  Verification for BIO-14 would now  
2     say:  Within 30 days of the start of construction  
3     the project owner shall submit a plan to the  
4     compliance project manager for review and  
5     approval.  Or the project owner will provide a  
6     check to the Desert Tortoise Preserve Committee or  
7     Rancho Santa Ana Botanical Garden, and a copy of  
8     the check to the compliance project manager.

9                     That ends the changes.

10          Q     Thank you.  Did you want to summarize  
11     your analysis?

12          A     Yes, unless you would like the applicant  
13     to do that.  But, yes, I can.

14          Q     Okay.

15                   HEARING OFFICER BOUILLON:  Well, before  
16     you summarize your testimony, Mr. Anderson, I'd  
17     like to ask each of the parties whether there are  
18     remaining issues that need to be adjudicated, or  
19     whether, in fact, there has been agreement.

20                   MR. GALATI:  There's been agreement on  
21     all issues with those changes.

22                   HEARING OFFICER BOUILLON:  Okay, I think  
23     we can then submit Mr. Anderson's testimony with  
24     the modification he's testified to by way of  
25     stipulation.  Since he's here we don't need any

1 written stipulation on his part.

2 I'll propose a stipulation that the  
3 biological resources portion of the final staff  
4 assessment, as modified by Mr. Anderson's  
5 testimony today, be admitted into evidence without  
6 objection. Is that acceptable to you, Mr. Galati?

7 MR. GALATI: That's correct, that's  
8 acceptable.

9 HEARING OFFICER BOUILLON: Acceptable to  
10 you, Ms. DeCarlo?

11 MS. DeCARLO: Yes, it is.

12 MR. GALATI: I have one follow-up  
13 question --

14 HEARING OFFICER BOUILLON: Wait.

15 MR. GALATI: -- if possible. Sorry.

16 HEARING OFFICER BOUILLON: Ms. Garnica,  
17 do you have any objection to what I just said?  
18 Are you concerned with the biological resources,  
19 that's my question.

20 MS. GARNICA: No, I just wish there was  
21 as study that was done on people that live in the  
22 mesa like there was a study done on the seeds.

23 HEARING OFFICER BOUILLON: Okay. And I  
24 assume you have no cross-examination for the  
25 witness?

1                   MR. GALATI: I just have one follow-up  
2 clarification question.

3                   HEARING OFFICER BOUILLON: Okay.

4                   CROSS-EXAMINATION

5 BY MR. GALATI:

6                   Q     And that is with regard to your changes  
7 to BIO-14.

8                   A     Yes.

9                   Q     Excuse me, I apologize, BIO-7, which  
10 deals with the monitoring of live birds. And your  
11 changes which would allow another qualified birder  
12 to be approved by the CPM.

13                   And could that be somebody local,  
14 trained here at the college?

15                   A     Yes.

16                   Q     Okay. And if that person was qualified  
17 to identify birds in the local area, that would be  
18 a person that would be acceptable to the  
19 Commission?

20                   A     Yes.

21                   Q     Thank you.

22                   A     I hope I said when I went through this,  
23 or another biologist or experienced birder, which  
24 means that they don't have to be a biologist, but  
25 they have to be familiar with bird behavior and



1 identification of birds.

2 Q Okay, thank you.

3 MR. GALATI: No further questions.

4 HEARING OFFICER BOUILLON: Does that  
5 conclude the applicant's testimony?

6 MS. DeCARLO: Yes, it does.

7 HEARING OFFICER BOUILLON: Okay. I mean  
8 staff's testimony.

9 MR. HANSON: May I speak on that? Is  
10 there public comment on stipulations?

11 HEARING OFFICER BOUILLON: No. We'll  
12 take public comments at the end all together.  
13 Well, if you have it strictly on this topic?

14 MS. HANSON: Yes, sir.

15 HEARING OFFICER BOUILLON: Come on up.

16 MR. HANSON: My name is Quenton Hanson;  
17 I work at Palo Verde College, Director of the  
18 Small Business and Economic Development Center, as  
19 well as a full-time faculty member in the  
20 Accounting Business Managements area.

21 I sat in at the meeting they had over in  
22 the other room there, and I brought up some  
23 objections, subject to the fact that the checks  
24 being made out here and so forth, are being sent  
25 to organizations in the western part of Riverside

1 County.

2 We're at the extreme end of the eastern  
3 end of Riverside County. In fact, ten years ago  
4 when the County drew up a map of this area, Blythe  
5 was located in the Arizona border, on the Arizona  
6 side of the border rather than California side of  
7 the border. That's how we get treated sometimes  
8 by our own County.

9 The point I wanted to bring up, and I  
10 emphasize very strongly, is I would like to see,  
11 since these environmental funds are coming from a  
12 project in this local area here, that part of this  
13 local fund be earmarked to come back to the local  
14 Blythe area.

15 And I can realize that with the elite  
16 resource you have in the rest of Riverside County,  
17 you may believe that all your experts are located  
18 over there. But just two weeks ago our chief  
19 biologist in this area, Mr. Anderson, who has a  
20 firm, has done extensive replanting of vegetation  
21 and so forth with the Indian tribe, had to lay off  
22 his entire workforce because he has no additional  
23 funding.

24 And what I'm trying to say is the  
25 funding is not getting back to the local area.

1       These environmental projects may be worthwhile and  
2       good and so forth, but the money is not flowing  
3       back to the areas that are directly affected.

4               While there may, in fact, be no tortoise  
5       habitat here in the local area, I still feel there  
6       should be some written stipulation that if at all  
7       possible local resources, local employment and so  
8       forth be directed to the local area here for these  
9       studies.

10              And it just simply isn't right to draw  
11       these funds and these resources from an area and  
12       not return some of it back to our local area.

13              And I'm a big Blythe supporter, and I  
14       believe that we should, in fact, have that  
15       stipulation added here, that whenever possible,  
16       local resources, local individuals be, in fact,  
17       employed to satisfy these requirements.

18              And I'd like to see that in writing as  
19       part of the agreement between the two parties  
20       here. So that's my only statement that I make  
21       here. Thank you.

22              HEARING OFFICER BOUILLON: Thank you,  
23       Mr. Hanson.

24              Mr. Galati, you may present your  
25       testimony on biological resources. And before you

1 do, let me ask the staff if you have any cross-  
2 examination for their biological witness?

3 MS. DeCARLO: No, we don't.

4 HEARING OFFICER BOUILLON: I think we  
5 can take it by stipulation then.

6 MR. GALATI: Great, I'll just have her  
7 sworn so she can do that. And identify some  
8 exhibits. If I could have Dr. Alice Karl sworn.  
9 Whereupon,

10 ALICE KARL  
11 was called as a witness herein and after first  
12 being duly sworn, was examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. GALATI:

16 Q Dr. Karl, could you please state your  
17 name, address, and current employment for the  
18 record.

19 A My name is Alice Karl. I reside at  
20 31660 County Road 27, Woodland, California. I am  
21 the consulting biologist to Greystone  
22 Environmental for the Blythe Energy Project.

23 Q And have you previously submitted  
24 written testimony in this proceeding?

25 A Yes, I have.

1           Q     And is that marked as exhibit 2,  
2     testimony of Alice Karl, biological resources?

3           A     I believe so.

4           Q     Okay. I'd like you to -- are you  
5     sponsoring any exhibits as part of your testimony  
6     today?

7           A     Yes. I'm sponsoring four exhibits,  
8     exhibit 1, the AFC and errata, section 7.12;  
9     exhibit number 20, the response to CEC data  
10    request numbers 9 through 26, and 135 through 139;  
11    exhibit number 21, the applicant's biological  
12    issues status update report docketed October 10,  
13    2000; and exhibit number 22, the draft biological  
14    assessment.

15          Q     And can you affirm your testimony under  
16    oath today?

17          A     Yes, I can.

18               MR. GALATI: I'd ask that the testimony  
19    and exhibits be moved into evidence.

20               HEARING OFFICER BOUILLON: Any  
21    objection?

22               MS. DeCARLO: No objection.

23               HEARING OFFICER BOUILLON: Hearing no  
24    objection they will be admitted.

25               MR. GALATI: That concludes our direct

1 testimony. Oh, I'm sorry. I have to ask one  
2 question.

3 BY MR. GALATI:

4 Q With the changes that you've heard from  
5 the final staff assessment, do you think that  
6 there will be any significant environmental  
7 impacts, and the project will comply with LORS?

8 A No, I agree with staff's conditions of  
9 certification, and I don't believe that there will  
10 be any significant impacts, and that the project  
11 will comply with LORS.

12 MR. GALATI: Thank you. That now  
13 concludes our testimony.

14 HEARING OFFICER BOUILLON: That will  
15 conclude the topic of biological resources,  
16 pending receipt by the Committee of a clean hard  
17 copy and floppy disk of the proposed conditions.

18 We can now turn, I believe, to some  
19 matters that were partially left unfinished  
20 yesterday which I'd like to discuss.

21 Specifically the Mesa Verde community.  
22 We received, at the end of testimony yesterday a  
23 letter from the State Department of Health  
24 Services with regard to the use and occupancy of  
25 the community of Mesa Verde, it appears.

1                   And I'd like to ask the parties if  
2           they've all had an opportunity to review that  
3           letter. First, staff, have you?

4                   MS. DeCARLO: No, we have not.

5                   HEARING OFFICER BOUILLON: Ms. Garnica,  
6           have you reviewed it?

7                   MS. GARNICA: Yes, I've looked at it,  
8           yes.

9                   HEARING OFFICER BOUILLON: Ms. Garnica,  
10          do you have any comments about that letter, the  
11          content of that letter?

12                  MS. GARNICA: Other than it's five years  
13          ago, so life has been growing, even according to  
14          the FSA, where it indicates that.

15                  So I guess it's only fair to say that  
16          there are more numbers added to that, to the  
17          numbers calculated on that study that was done by  
18          the Public Health.

19                  HEARING OFFICER BOUILLON: The community  
20          has obviously grown within the last five years?

21                  MS. GARNICA: Yes.

22                  HEARING OFFICER BOUILLON: Okay. Does  
23          anybody have any objection to the Committee taking  
24          judicial notice of the content of that letter,  
25          recognizing that, in fact, the data is, as

1 Ms. Garnica points out, almost five years old?

2 MS. DeCARLO: No objection.

3 MR. GALATI: No objection.

4 HEARING OFFICER BOUILLON: Ms. Garnica?

5 MS. GARNICA: No.

6 HEARING OFFICER BOUILLON: Okay. The  
7 Committee will take judicial notice of that, and  
8 it has been marked as exhibit number 55, and it  
9 will be admitted into evidence.

10 MR. GALATI: I would like to -- can I  
11 submit also something I didn't have yesterday as  
12 evidence, as the way that that study was done?

13 HEARING OFFICER BOUILLON: What is it?

14 MS. GARNICA: It's in respect to the  
15 testimony that was done yesterday. I have roughly  
16 1000 signatures of farmworkers, and people who  
17 live on the Mesa Verde. I would like to submit  
18 that as evidence.

19 MR. GALATI: If I could see it first, I  
20 probably won't have a problem, but --

21 HEARING OFFICER BOUILLON: Yes.

22 MR. GALATI: -- if I could see that?

23 HEARING OFFICER BOUILLON: Is that one  
24 copy of it?

25 MS. GARNICA: That's one copy. That's



1 the hard copy.

2 (Laughter.)

3 (Pause.)

4 HEARING OFFICER BOUILLON: I'll tell you  
5 what, why don't we take a five-minute break for  
6 the staff also to look at that document. And when  
7 you're both done, if you'd pass it up to the  
8 Committee, we'll take a look at it.

9 And then we'll reconvene and anybody  
10 that wants to can stretch their legs.

11 PRESIDING MEMBER KEESE: Okay, take five  
12 minutes, look these documents over.

13 (Brief recess.)

14 PRESIDING MEMBER KEESE: We're back.

15 HEARING OFFICER BOUILLON: This meeting  
16 will come back to order.

17 I've been handed a thick packet that's  
18 squeezed together, about an inch-thick of a set of  
19 duplicate originals of what is basically a letter  
20 to Lance Shaw, Project Manager, regarding the  
21 Blythe Energy Project, signed by a great many  
22 residents of Blythe and Mesa Verde and the  
23 surrounding communities.

24 I've discussed this off the record with  
25 both staff and the applicant. Neither has any

1 objection to the admission of these as evidence.  
2 They will be collectively marked as exhibit number  
3 56. And received into evidence.

4 And I will make sure that both staff and  
5 applicant receive copies of each of these. And,  
6 Ms. Garnica, do you, yourself, have copies of  
7 this?

8 MS. GARNICA: Yes, I did.

9 HEARING OFFICER BOUILLON: You  
10 already --

11 MS. GARNICA: I took a copy.

12 HEARING OFFICER BOUILLON: -- have a  
13 copy?

14 MS. GARNICA: Yes.

15 HEARING OFFICER BOUILLON: So I will  
16 provide them to staff and to applicant upon our  
17 return to Sacramento.

18 That, except for stipulation, I believe,  
19 concludes the evidentiary part of this hearing.  
20 I'd like to ask Mr. Hanson if you have any  
21 additional public comment at this time?

22 MR. HANSON: No, thank you.

23 HEARING OFFICER BOUILLON: And we also  
24 have in the audience a Jonette Smith. I  
25 understand you may or may not have a comment about

1 the water?

2 MS. SMITH: I just had a question about  
3 the water.

4 HEARING OFFICER BOUILLON: Could you  
5 come forward, please.

6 MS. SMITH: My name is Jonette Smith. I  
7 live here. I live at 12458 West McKinley Drive in  
8 Blythe in what's called the Ballsberg Tract.  
9 We're less than two miles from the proposed site.

10 My question is what kind of testing will  
11 they be doing on the water that's used? I  
12 understand that their evaporation ponds for the  
13 birds. I just wondered if they were going to be  
14 doing any further testing --

15 HEARING OFFICER BOUILLON: Take your  
16 time.

17 MS. SMITH: -- such as for heavy metals,  
18 for any other kind of contamination of the  
19 groundwater. Because we use the groundwater right  
20 now for drinking.

21 HEARING OFFICER BOUILLON: Would either  
22 of the lawyers or Mr. Shaw care to take a shot at  
23 that?

24 MR. GALATI: I'm Scott Galati, represent  
25 the applicant. First of all, the ponds are going

1 to be designed in accordance with the Regional  
2 Water Quality Control Board standards.

3 We have a report of waste discharge that  
4 prevents the ponds leaking. They're also designed  
5 in a way that they will not over-top, even during  
6 flooding events.

7 So anything in the pond is not going to  
8 get out of the pond. That's number one.

9 Number two, we also have a condition of  
10 certification that requires us to test the pond, I  
11 think it includes metals, as well. And that that  
12 test be submitted to the Energy Commission  
13 compliance project manager for review.

14 And I believe that it's part of our  
15 annual compliance report. I believe it is at  
16 least yearly and I will direct your attention to  
17 the final staff assessment on soil and water. And  
18 if you give me just a moment I'll get -- okay.

19 It's the soil and water section and  
20 there are conditions of certification at the end.  
21 One of those requires us to test the ponds. I  
22 believe there's also some requirements in the  
23 biology section on testing the ponds.

24 Something else to understand is that the  
25 report of our permit from the Regional Water

1       Quality Control Board, which is called report of  
2       waste discharge, ROWD, requires testing, as well.

3               So there will be extensive testing on  
4       the ponds. And they are designed and lined so  
5       that they won't have leakage into the groundwater.

6               MS. SMITH: So where is the wastewater  
7       going to go? Just into evaporation?

8               MR. GALATI: It's a zero discharge; it  
9       evaporates. And any sludge that is taken is  
10      collected and disposed of off-site. But the  
11      water, itself, we reuse it until we no longer can  
12      reuse it, and then it is evaporated. That's the  
13      purpose of the ponds.

14              MS. SMITH: Okay.

15              MR. GALATI: Stored evaporation.

16              MS. SMITH: So none of it is supposed to  
17      go into the groundwater?

18              MR. GALATI: Correct. And extensive  
19      measures have been taken, both by us and extensive  
20      requirements required by both the Energy  
21      Commission and the Regional Water Quality Control  
22      Board to insure that doesn't happen.

23              MS. SMITH: Okay. Thank you.

24              HEARING OFFICER BOUILLON: Mr. Shaw, can  
25      you confirm most of that, at least?

1                   MR. SHAW: Sure, and I'm not sure if I  
2                   understood all of her question, but there's  
3                   another part of it, the quote, sanitary  
4                   wastewater. And that goes into a septic system  
5                   and leach fields.

6                   That's the water from cleaning hands and  
7                   such, not plant water.

8                   HEARING OFFICER BOUILLON: What we would  
9                   call domestic use.

10                  MR. SHAW: Correct, domestic use water.

11                  MS. SMITH: And there will be no sewer?

12                  HEARING OFFICER BOUILLON: Excuse me?  
13                  Does any other member of the public care to make  
14                  any comment at this time?

15                  Seeing no activity, we will turn now to  
16                  the stipulations between the parties regarding the  
17                  remaining testimony and exhibits.

18                  It is my understanding that exhibits 1  
19                  through 48 are being offered without opposition by  
20                  the applicant. And exhibits 53 -- does exhibit 53  
21                  include the supplemental testimony?

22                  MS. DeCARLO: No, supplemental testimony  
23                  is exhibit 54. And I also have a couple of  
24                  additional declarations that I handed to the  
25                  Committee earlier that I need marked.

1                   HEARING OFFICER BOUILLON: And exhibits  
2                   53 and 54 are being offered by the staff, and  
3                   there's no objection to them and they will -- all  
4                   those exhibits will be received into evidence,  
5                   including the exhibits and testimony.

6                   MR. GALATI: No objection from the  
7                   applicant.

8                   MS. DeCARLO: No objection from staff,  
9                   but could we also mark the additional declarations  
10                  that I handed to you earlier?

11                  HEARING OFFICER BOUILLON: Yes.

12                  MS. DeCARLO: Okay.

13                  HEARING OFFICER BOUILLON: I've marked  
14                  those as a part of exhibit 54.

15                  MS. DeCARLO: Okay, that's great, thank  
16                  you.

17                  MR. GALATI: I just wanted to make sure  
18                  that the record reflected also that 50, 51, 52  
19                  were already admitted into evidence.

20                  HEARING OFFICER BOUILLON: They were.

21                  MR. GALATI: Okay.

22                  HEARING OFFICER BOUILLON: By my notes.  
23                  My records reflect that all exhibits that have  
24                  been marked have been admitted into evidence.

25                  That will conclude the evidentiary

1       portion of this hearing.

2               We're going to need some briefs on  
3       several issues that we've discussed from time to  
4       time. I'm going to leave it to the parties to  
5       determine what specific portions need to be  
6       briefed, but I want them to pay specific attention  
7       to those areas about which there has been a  
8       controversy in these evidentiary hearings.

9               And not only, for instance, soil and  
10       water number 14, that may have been resolved, it  
11       may not have been resolved. But I need a clean  
12       copy of that.

13              In addition, the areas raised by Ms.  
14       Garnica, I want the parties to pay particular  
15       attention to her concerns.

16              And I've ordered an expedited  
17       transcript. We'll have at least yesterday's  
18       transcript available by Monday, at least via the  
19       web. And I'm going to request briefs by close of  
20       business on Friday of next week, which is December  
21       1st.

22              PRESIDING MEMBER KEESE: That's Friday  
23       of this week. The 8th.

24              HEARING OFFICER BOUILLON: I'm sorry,  
25       December the 8th. And then reply briefs, I think



1       also would be appropriate by December 15th, close  
2       of business.

3               Also, we have hearings scheduled  
4       tentatively for this Thursday at the California  
5       Energy Commission in Sacramento. That hearing is  
6       canceled.

7               MS. DeCARLO: I have one procedural  
8       question. The FDOC has not been moved into  
9       evidence. I'm not sure -- we were anticipating  
10      that Alan DeSalvio from the District would be  
11      arriving today. However, due to the Thanksgiving  
12      Holiday we weren't able to contact him directly.  
13      We do anticipate him to arrive sometime this  
14      morning. We can clarify that with staff in about  
15      ten minutes.

16              HEARING OFFICER BOUILLON: I think we  
17      can take that by way of an offer of proof at this  
18      point.

19              MS. DeCARLO: Okay.

20              MR. GALATI: We have an objection to  
21      that being admitted without Mr. DeSalvio's  
22      sponsoring that.

23              MS. DeCARLO: Okay, thank you.

24              HEARING OFFICER BOUILLON: So that we  
25      can accept the FDOC as exhibit number 57.

1 MS. GARNICA: Mr. Bouillon, I didn't  
2 catch that last statement on that date of the  
3 December 15th?

4 HEARING OFFICER BOUILLON: Excuse me?

5 MS. GARNICA: You had mentioned the date  
6 of December 15th?

7 HEARING OFFICER BOUILLON: Yes.

8 MS. GARNICA: That was --

9 HEARING OFFICER BOUILLON: That's for  
10 what we call reply briefs.

11 MS. GARNICA: Okay.

12 HEARING OFFICER BOUILLON: The way that  
13 works is that you will get --

14 MS. GARNICA: I thought that was  
15 December 8.

16 HEARING OFFICER BOUILLON: You will all  
17 file your briefs --

18 MS. GARNICA: Yes.

19 HEARING OFFICER BOUILLON: -- with all  
20 your questions, all your arguments --

21 MS. GARNICA: Okay.

22 HEARING OFFICER BOUILLON: -- on  
23 December the 8th.

24 MS. GARNICA: Okay.

25 HEARING OFFICER BOUILLON: Then you read

1 the other ones, and you reply to whatever they  
2 said.

3 MS. GARNICA: Oh, okay.

4 HEARING OFFICER BOUILLON: Okay? They  
5 will reply to you; you reply to them.

6 MS. GARNICA: Okay, and that's by  
7 December 15th?

8 HEARING OFFICER BOUILLON: Yes.

9 MS. GARNICA: Okay.

10 MR. GALATI: If I could have just a  
11 procedural clarification on the record. If we  
12 handle soil and water and the changes to biology,  
13 I'm assuming the record will be open until -- we  
14 don't have to make a special motion to open the  
15 record to have that evidence?

16 HEARING OFFICER BOUILLON: I have not  
17 closed the record.

18 MR. GALATI: Okay, thank you.

19 HEARING OFFICER BOUILLON: If you have  
20 agreed-upon conditions, that can still be  
21 submitted as parts of your brief.

22 MR. GALATI: Okay, thank you.

23 HEARING OFFICER BOUILLON: But I do not  
24 intend to take any more live testimony, nor hear  
25 any controverted evidence.

1 All right, that concludes this hearing.  
2 We will adjourn. Once the briefs are received, we  
3 will issue a Committee's Presiding Member's  
4 Proposed Decision in due course. That's lawyer  
5 talk for as quick as we can get it done.

6 Thank you all for your participation.  
7 And in closing I want to express my appreciation  
8 to the City of Blythe, they've been most gracious  
9 hosts.

10 PRESIDING MEMBER KEESE: Thank you, all.

11 MR. GALATI: Thank you.

12 MR. GRATTAN: Thank you.

13 (Whereupon, at 9:30 a.m., the hearing  
14 was concluded.)

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## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of December, 2000.

VALORIE PHILLIPS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345